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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,874	09/29/2003	Jerry R. Hill	TKG4166	4644

7590 03/23/2004

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EXAMINER
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NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/672,874	<b>Applicant(s)</b> HILL, JERRY R.	
	<b>Examiner</b> Son T. Nguyen	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.  
2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-12 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

*Antm*  
*Prim Exam 3643*

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) ☐ All    b) ☐ Some \* c) ☐ None of:  
        1. ☐ Certified copies of the priority documents have been received.  
        2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
    \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/29/03</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1,2,4** are rejected under 35 U.S.C. 102(b) as being anticipated by US 5579610 on form PTO-1449 (herein 610).

For claim 1, 610 discloses a securing device comprising a flexible panel 14, said panel having a top side, a bottom side, and a peripheral edge (where ref. 20 is pointing at); a plurality of elongate members 22 (including cable linking the spheres as discussed in col. 3, lines 59-60) each having an attached end (the end that is in the seam or loop around the edges) attached to said peripheral edge and a free end (the other end attached to rings 26) extending away from said panel; a plurality of spikes 28, each of said spikes being attached to one of said free ends of said elongate members; and wherein said bottom side of said panel may be abutted against an upper side of the protective covering and said spikes driven into a ground surface such that said device secures the protective covering to the ground surface.

For claim 2, 610 discloses wherein said peripheral edge comprises an elastomeric loop (since the material of the net is elastic and the edge is of the same material being looped/seamed to provide for chain 22, the edge is also elastic, col. 3, lines 35).

For claim 4, 610 discloses wherein said elongate members are spaced from each other as shown.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over 610 (as above) in view of US 5456043 (herein 043). 043 teaches a resiliently elastic mesh material for a tree crop covering (col. 4, lines 49-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the panel of 610 out of a resiliently elastic mesh material as taught by 043, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

5. **Claims 5-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over 610 (as above) in view of US 6663328 (herein 328).

For claims 5,6,8 & 9, 328 teaches cargo binder device to hold down cargo, the device having elongated members 14 made out of resilient elastic material such as bungee cords. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the members of 610 out of a resiliently elastic material as taught by 328, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the

intended use (to allow a user to stretch the members as desired) as a matter of obvious choice.

For claims 7 & 10, 610 as modified by 328 (emphasis on 610) discloses at least four elongate members, one on each corner of the rectangular net 14.

6. **Claims 11,12** are rejected under 35 U.S.C. 103(a) as being unpatentable over 610 (as above) in view of 328 (as above) and 043 (as above).

For claim 11, 610 discloses a securing device for selectively preventing movement of a rose protective covering, said device including: a flexible panel 14, said panel having a top side, a bottom side, and a peripheral edge (where ref. 20 is pointing at), said peripheral edge comprising an elastomeric loop (since the material of the net is elastic and the edge is of the same material being looped/seamed to provide for chain 22, the edge is also elastic, col. 3, lines 35), a portion of said panel positioned within said peripheral edge comprising a elastic mesh material (col. 1, line 35); a plurality of elongate members 22 (including cable linking the spheres as discussed in col. 3, lines 59-60) each having an attached end (the end that is in the seam or loop around the edges) attached to said peripheral edge and a free end (the other end attached to rings 26) extending away from said panel, said elongate members being spaced from each other, said plurality of elongate members including at least four elongate members (one on each corner of the rectangular net 14); a plurality of spikes 28, each of said spikes being attached to one of said free ends of said elongate members; and wherein said bottom side of said panel may be abutted against an upper side of the protective covering and said spikes driven into a ground surface such that said device secures the

Art Unit: 3643

protective covering to the ground surface. However, 610 lacks teaching of resiliently elastic for the mesh material and the elongated members.

328 teaches cargo binder device to hold down cargo, the device having elongated members 14 made out of resilient elastic material such as bungee cords. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the members of 610 out of a resiliently elastic material as taught by 328, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (to allow a user to stretch the members as desired) as a matter of obvious choice.

043 teaches a resiliently elastic mesh material for a tree crop covering (col. 4, lines 49-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the panel of 610 out of a resiliently elastic mesh material as taught by 043, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 12, 610 discloses a method of securing a rose protective covering to a ground surface comprising the steps of: providing a flexible panel 14, said panel having a top side, a bottom side, and a peripheral edge (where ref. 20 is pointing at), said peripheral edge comprising an elastomeric loop (since the material of the net is elastic and the edge is of the same material being looped/seamed to provide for chain 22, the edge is also elastic, col. 3, lines 35), a portion of said panel positioned within said peripheral edge comprising a elastic mesh material (col. 1, line 35); providing a plurality

Art Unit: 3643

of elongate members 22 (including cable linking the spheres as discussed in col. 3, lines 59-60) each having an attached end (the end that is in the seam or loop around the edges) attached to said peripheral edge and a free end (the other end attached to rings 26) extending away from said panel, said elongate members being spaced from each other, said plurality of elongate members including at least four elongate members (one on each corner of the rectangular net 14); providing a plurality of spikes 28, each of said spikes being attached to one of said free ends of said elongate members; and positioning said bottom side of said panel against an upper side of the protective covering and driving said spikes into a ground surface such that said elongate members are in a stretched state. However, 610 lacks teaching of resiliently elastic for the mesh material and the elongated members in the method.


328 teaches cargo binder device to hold down cargo, the device having elongated members 14 made out of resilient elastic material such as bungee cords. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the members in the method of 610 out of a resiliently elastic material as taught by 328, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (to allow a user to stretch the members as desired) as a matter of obvious choice.

043 teaches a resiliently elastic mesh material for a tree crop covering (col. 4, lines 49-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the panel in the method of 610 out of a resiliently elastic mesh material as taught by 043, since it has been held to be within the

Art Unit: 3643

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
March 19, 2004